

Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, D.C. 20554

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<b>In the Matter of</b>	)	
	)	
<b>Inquiry Concerning the Deployment of</b>	)	
<b>Advanced Telecommunications</b>	)	
<b>Capability to All Americans in a Reasonable</b>	)	<b>GN Docket No. 04-54</b>
<b>And Timely Fashion, and Possible Steps</b>	)	
<b>To Accelerate Such Deployment</b>	)	
<b>Pursuant to Section 706 of the</b>	)	
<b>Telecommunications Act of 1996</b>	)	
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**REPLY COMMENTS OF MCI, INC.**

MCI, Inc. hereby submits its reply to comments filed in response to the Commission's Fourth Notice of Inquiry into whether advanced telecommunications capability is being deployed to all Americans in a reasonable and timely fashion.<sup>1</sup>

**I. INTRODUCTION**

In its initial comments, MCI stated that given the "regulatory relief" the Commission has given to the incumbent LECs, the Commission should also, at the very least, take steps to promote multimodal broadband "pipes" to consumers.<sup>2</sup> MCI urges the

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<sup>1</sup> *Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion, and Possible Steps to Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996*, Notice of Inquiry, 19 FCC Rcd 5136 (2004).

<sup>2</sup> Comments of MCI, at 2; *see also* Comments of GCI, at 2; Comments of EchoStar, at 3.

Commission to take the five concrete steps outlined in its Comments<sup>3</sup> to ensure that there is meaningful competition in the residential broadband market, in light of the current cable/DSL broadband duopoly. Otherwise, the multimodal broadband competition envisioned by President Bush and Chairman Powell will not come to pass. As Chairman Powell recently stated, having "just one wire to the home" over the past hundred years has created the "enormous difficulties of monopoly control, bottleneck facilities, the pricing of those facilities."<sup>4</sup> MCI agrees with Chairman Powell's belief that "[m]agical things happen in competitive markets...when there is real choice and pressures for innovation."<sup>5</sup>

## **II. THE BROADBAND MARKET IS NOT TRULY COMPETITIVE**

Contrary to USTA's and the BOCs' assertions, heated competition is not underway between cable, wireless, satellite, and local phone companies.<sup>6</sup> As MCI and other commenters outlined, the Commission's own statistics show that the deployment of high-speed services is still being controlled by two suppliers: cable companies and the former Bell Operating Companies (BOCs).<sup>7</sup> Within the DSL market, 95 percent of all ADSL lines were provided by incumbent LECs.<sup>8</sup> MCI re-emphasizes that only competition will provide the greater consumer choice at lower prices that is necessary to spur consumer uptake of advanced capabilities and services on a more widespread basis.

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<sup>3</sup> See generally, Comments of MCI, filed May 10, 2004.

<sup>4</sup> Remarks of Michael K. Powell, Chairman, Federal Communications Commission at the FCC Wireless Broadband Forum, Washington, D.C., May 19, 2004, at 2.

<sup>5</sup> *Id.* at 2-3.

<sup>6</sup> Comments of USTA, at 8; Comments of Verizon, at 5, 9-14; Comments of SBC, at 10.

<sup>7</sup> Comments of MCI, at 6-8; Comments of AT&T, at 3.

<sup>8</sup> Comments of MCI, at 7; Comments of EchoStar at 3.

### **III. THE COMMISSION SHOULD RE-EXAMINE ITS POLICY OF PERMITTING ILECS TO ESCAPE UNBUNDLING OF THEIR FIRST/LAST MILE FACILITIES.**

MCI urges the Commission to reexamine its decisions that all but eliminate intramodal competition. The ILECs have long argued that unbundling of broadband facilities impeded deployment of broadband facilities, and, presumably, that intermodal competition would make intramodal broadband competition unnecessary. The Commission all but adopted this view in its recent *UNE Triennial Review Order*,<sup>9</sup> wherein it restricted CLECs' ability to get unbundled access to broadband first/last mile facilities. It is time for the Commission to re-examine those restrictions.

First, as noted above, true intermodal competition is but a glimmer on the horizon. MCI, more than most companies, wishes that true intermodal competition existed for broadband first mile facilities, but the sad fact remains that, today, there is at best a "Bell" or "Cable" duopoly for broadband facilities, and in many places not even that. As Chairman Powell noted recently, the United States needs to get to a least a "magic three" before real first mile competition kicks in.<sup>10</sup> However, such wireless technologies as WiMax, while scheduled to be rolled out either later this year or early in 2005, will take some time to deploy and gain commercial acceptance, if they succeed at all. The Bush Administration tends to agree. Michael Gallagher of NTIA recently stated that "[f]or the local loop, we're just beginning to see those types of intermodal competitive offerings,

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<sup>9</sup> *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, 18 FCC Rcd 16978, as modified by *Errata*, 18 FCC Rcd. 19020, ¶ 109 (2003) ("UNE Triennial Review Order").

<sup>10</sup> Remarks of Michael K. Powell, Chairman, Federal Communications Commission at the FCC Wireless Broadband Forum, Washington, D.C., May 19, 2004, at 2.

which still are not quite fully sustainable.”<sup>11</sup> Gallagher echoed Powell’s sentiments, stating that “competitive theory would say that two [types of broadband providers] is not a robust competitive market. To really deliver the benefits of competition to consumers, it’s better to have more...more than two is certainly optimal.”<sup>12</sup>

Second, as important, the ILECs’ claims that unbundling requirements impede broadband deployment is yet another in a long line of ILEC claims that not only lack any substantial empirical evidentiary support, but are actually contrary to the facts. For example, in New Jersey, Verizon recently announced that it was scaling back its fiber deployment because the Board of Public Utilities did not give Verizon everything it wanted by way of rate increases for *narrowband* UNEs.<sup>13</sup> Thus, despite the fact that this Commission gave Verizon (and the other ILECs) significant broadband relief in the *UNE Triennial Review Order*, Verizon continues to slow roll its broadband deployment on the basis of all but unrelated actions at the New Jersey Board. Verizon’s action in New Jersey speaks volumes that unbundling requirements bear little relation to broadband deployment, and that Verizon has no compunction against using broadband deployment as a club to make regulators submit to Verizon’s regulatory agenda. The reality is that, politics and regulatory agenda aside, broadband deployment is based, first and foremost, on the economics of broadband deployment. Where and when Verizon sees that it has opportunity to deploy broadband first mile facilities, it will do so. In light of this, it is time for the Commission to re-examine its decisions that cut intramodal competitors off

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<sup>11</sup> James S. Granelli, “Q&A; The Administration’s Ear to Telecom,” L.A. TIMES, May, 24, 2004.

<sup>12</sup> *Id.*

from the ILEC broadband network. Until and unless true intermodal broadband competition emerges, intramodal competition provides the only realistic opportunity for more robust and more widespread deployment of broadband services to consumers.

#### **IV. THE COMMISSION SHOULD USE THE LAYERS PRINCIPLES TO RESOLVE LAST-MILE BOTTLENECK ISSUES**

MCI reiterates that the Commission should seriously consider implementing the layers principles as described in section IV of its Comments<sup>14</sup> to tailor regulation that ensures that entities without market power have access to bottleneck facilities. In pending and future rulemakings, the Commission should take advantage of the flexibility in the Telecommunications Act to use the layers framework as a tool to make policy decisions that are tailored to the manner in which technology and the market are developing.

For example, rather than attempting to resolve the pending Broadband Framework proceeding by succumbing to the incumbent LECs' demands that the Commission allow them to provide broadband transmission service on a private-carriage basis under Title I, the Commission instead should apply the layers-based analysis as described in MCI's Public Policy Paper entitled "Adapting FCC Policymaking to the Network Layers Model: A Roadmap for FCC Action."<sup>15</sup> As is explained therein, a layers-based analysis would

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<sup>13</sup> Steve Strunsky, "Verizon Scales Back Plans for Fiber Optic Network," *NEWSDAY.COM*, May 19, 2004; "Verizon Tells Staff It May Not Build Fiber Network in N.J.," *USATODAY*, Apr. 9, 2004.

<sup>14</sup> Comments of MCI, at 13-16.

<sup>15</sup> See Richard S. Whitt, Senior Director for Global Policy and Planning, MCI, *ADAPTING FCC POLICY POLICYMAKING TO THE NETWORK LAYERS MODEL: A ROADMAP FOR FCC ACTION*, March 2004, ("Adapting FCC Policymaking to the Network Layers Model"), filed with the Commission in an *ex parte* submission, Letter from Gil M. Strobel, Lawler, Metzger & Milkman, LLC, counsel for MCI, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 04-36, CC Docket No. 02-33; CC Docket No. 01-337, CC Docket No. 01-92, and CC Docket No. 96-45 (Mar. 29, 2004).

focus on whether incumbent LECs have market power with respect to the physical and logical network layers.<sup>16</sup> This approach would allow the Commission to apply regulation at the logical and/or physical layers to prevent the incumbent LECs from leveraging their power in one layer to harm competition in another layer.<sup>17</sup> Restricting regulation to the physical or logical layer, including DSL, while refraining from regulating at the higher layers where no firm currently has market power, would foster continued competition and innovation in the applications and content layers.<sup>18</sup>

Similarly, the Commission could use a slightly refined version of the layers model to address the BOCs' concerns in the pending *Broadband Dominance/Non-Dominance* proceeding.<sup>19</sup> ATM and Frame Relay services provided by competitive carriers such as MCI depend on special access services provided by incumbent LECs. As MCI outlines in "Adapting FCC Policymaking to the Network Layers Model: A Roadmap for FCC Action," both ATM and Frame Relay reside in the logical layer.<sup>20</sup> Under the layers model, the Commission could conclude that incumbent LECs have market power in the provision of ATM and Frame Relay as well as special access.<sup>21</sup> Alternatively, the Commission could use a more refined approach to conclude that regulating an incumbent LECs' provision of special access (such as by adopting special access metrics, grooming

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<sup>16</sup> *Id.* at 5.

<sup>17</sup> *Id.* at 6-7.

<sup>18</sup> *Id.* at 10.

<sup>19</sup> *Review of Regulatory Requirements for Incumbent LEC Broadband Telecommunications Services*, Notice of Proposed Rulemaking, 16 FCC Rcd 22745 (2001).

<sup>20</sup> *Adapting FCC Policymaking to the Network Layers Model*, at 10.

<sup>21</sup> *Id.* at 10-11.

requirements and separate affiliate requirements) would provide a sufficient safeguard to allow non-dominant treatment of incumbent LEC ATM and Frame Relay services.<sup>22</sup>

MCI urges the Commission to institute a rulemaking proceeding to develop an overarching policy framework founded on the layers-based approach.<sup>23</sup> Under this approach, last-mile physical access layer facilities providers with market power would not be allowed to restrict choice, innovation, and competition at the higher layers.<sup>24</sup> Incumbent LECs would be required to continue allowing nondiscriminatory access to their DSL transmission services, unless and until market power concerns were no longer an issue.<sup>25</sup>

**V. THE COMMISSION SHOULD USE THE EXISTING FEDERAL UNIVERSAL SERVICE FUND OR THE BROADBAND CONNECTIVITY FUND TO EXPAND RURAL BROADBAND ACCESS**

MCI urges the Commission to consider ways of expanding broadband access to rural and underserved areas, either through the federal universal service fund or a newly created Broadband Connectivity Fund.<sup>26</sup> Providing federal support to broadband access providers, such as broadband over power line, satellite broadband technology, wireless mobile technology, and others would foster the development of a rich array of broadband access providers from which consumers can choose.

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<sup>22</sup> *Id.* at 11.

<sup>23</sup> *See* A HORIZONTAL LEAP FORWARD: FORMULATING A NEW PUBLIC POLICY FRAMEWORK BASED ON THE NETWORK LAYERS MODEL, Richard S. Whitt, MCI, December 2003 (“A Horizontal Leap Forward”); *see also*, ADAPTING FCC POLICYMAKING TO THE NETWORK LAYERS MODEL.

<sup>24</sup> *See id.* at 6-8, 10.

<sup>25</sup> *See id.* at 6-8.

<sup>26</sup> Comments of MCI, at 16-20.

Before expanding the Universal Service Fund to include broadband access, however, the Commission must institute a connections-based contribution mechanism which associates universal service payments with physical facilities, rather than the provision of service. A connections-based system would advance the goal of universal service in that most of the expense in high-cost areas stems from providing access to facilities, not services. In addition, an amendment to section 254 of the Telecommunications Act to explicitly require the Commission to provide universal service support for broadband access would be helpful.

## **VI. BARRIERS TO RIGHTS-OF-WAY AND BUILDING ACCESS IMPEDE BROADBAND DEPLOYMENT**

MCI urges the Commission to act to prevent municipalities from erecting barriers to rights-of-way access through the imposition of non-cost-based fees for use of the right-of-way and delays in the permitting process. As MCI and other commenters state,<sup>27</sup> contrary to the assertions of NATOA, the Alliance for Community Media Broadband Development, and the United States Conference of Mayors, *et al.*, the imposition of additional tiers of regulation and burdensome terms and conditions unrelated to the management of the right-of-way make it extraordinarily difficult, if not impossible, for the industry to serve multiple jurisdictions.

Similarly, the Commission should remove the barriers to access to multi-tenant environments (MTEs) erected by building owners and property managers. To promote broadband deployment, MCI urges the Commission to establish a national set of rules

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<sup>27</sup> Comments of MCI, at 21-22; Comments of AT&T, at 16-18; Comments of Current Communications Group, at 10-11; Comments of Comcast, at 18.

prohibiting unreasonable building access requirements in multi-tenant environments (MTEs).

Respectfully submitted,

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